

Applicant disagrees and believes the claims are patentable over the art of record. Specifically, Applicant respectfully submits that the art of record does not show or suggest the recitations of Applicant's pending claims, and hence fails to render the claimed invention obvious. Accordingly, Applicant respectfully requests that rejections made in the Office Action of Applicant's pending claims be withdrawn, and a notice of allowance on the pending claims be issued.

II. Art of Record Summarized

A. Mays

What Mays Teaches

Mays describes a spread spectrum frequency hopping reader system receiving reflected and modulated signals from radio frequency tags. The reflected signals are received by the reader system using homodyne techniques.

What Mays Fails to Teach

Mays fails to teach use of heterodyne techniques for the reader system to receive reflected signals from the tags.

B. Simon

What Simon Teaches

Simon describes a keyless motor vehicle entry and ignition system. A user activates a remote control by selecting a function for the motor vehicle to perform. When verification identifications are produced, a control circuit in the motor vehicle issues a control signal to cause the motor vehicle to perform the selected function. Of note, the control signal is sent from the remote based upon initiation by the remote user rather than being reflected from the remote in response to a signal received by the remote.

What Simon Fails to Teach

Simon fails to teach use of heterodyne techniques for a reader system to receive reflected signals from the tags. The control signal received by the super heterodyne receiver is initiated at remote control rather than resulting from a signal being reflected by the remote control. If the control signal received by the super heterodyne receiver in the motor vehicle resulted from a

signal being reflected from the remote control, then the user of the remote control would no longer initiate control signals to be sent to the motor vehicle and the purpose of Simon's invention would be defeated.

III. Claimed Invention Compared With Art of Record

A. Discussion of Independent Claims With Respect to Art of Record

Mays and Simon either alone or in combination fail to teach Claim 1, which recites, in part, "a heterodyne receiver coupled to the antenna circuit and configured to receive on the antenna circuit reflected radio-frequency signals from the RFID tag...." Claim 7, which recites, in part, "receiving reflected radio-frequency signals from the RFID tag device using a heterodyne reception technique...." Claim 14, which recites, in part, "a heterodyne receiver configured to receive the radio-frequency signals that are reflected from the RFID tag...." and Claim 18, which recites, in part, "to receive, using a heterodyne reception technique, modulated radio-frequency signals reflected from the RFID."

As discussed above, Mays teaches use of homodyne techniques to receive reflected signals and Simon teaches use of heterodyne techniques to receive non-reflected signals. However, Mays and Simon alone and in combination fail to teach use of heterodyne techniques to receive reflected signals as required by the claim recitations. The claimed invention does not use Simon's non-reflected signals, so Simon's teaching on how non-reflected signals are received is not relevant for the claimed invention. Furthermore, the purpose of Mays would be defeated, as discussed below, if Simon's teaching of receiving non-reflected signals was used with Mays.

Consequently, the art of record does not teach or suggest the above recitations of the independent claims 1, 7, 14, and 18. The art of record also does not teach or suggest how to modify and/or combine the art of record such that it meets the claim recitations. Accordingly, Claims 1, 7, 14, and 18 are not rendered obvious by the art of record, and hence Applicant respectfully requests that Examiner hold Claims 1, 7, 14, and 18 allowable for at least the reasons discussed above.

In addition, as set forth above, under the MPEP standards, any alleged motivation to combine or modify must be objectively verifiable. The MPEP recognizes the pitfalls associated with the tendency to subconsciously use impermissible “hindsight” when an examiner attempts to establish such a rationale. The MPEP has set forth at least two rules to ensure against the likelihood of such impermissible use of hindsight. The first rule is that “under 35 U.S.C. 103, the examiner must step backward in time and into the shoes worn by the hypothetical ‘person of ordinary skill in the art’ when the invention was unknown and just before it was made. In view of all factual information, the examiner must then make a determination whether the claimed invention ‘as a whole’ would have been obvious at that time to that person. *MPEP* § 2142.

Assuming for sake of argument that even if there were teachings or suggestions in the art of record as to how to modify and/or combine the art of record to meet the recitations, including those discussed above, of independent claims 1, 7, 14, and 18 (which, as discussed above, is not the case), Applicant respectfully points out that nowhere has the Office Action pointed to any objectively verifiable motivation to modify and/or combine the teachings of the art of record beyond a bare assertion that one skilled in the art would have recognized that the heterodyne receiver (double detection receivers) has the advantages that the selectivity can be easily defined by a band-pass filter at the intermediate frequency. Accordingly, Applicant respectfully requests that Examiner point to objectively verifiable evidence or supply an affidavit setting forth the objectively verifiable evidence of such motivation to combine or modify. In the absence of objectively verifiable motivation to modify and/or combine the art of record to reach Applicant's claims at issue, no *prima facie* case of unpatentability has been established. Accordingly, Applicant respectfully requests that Examiner allow Claims 1, 7, 14, and 18 for at least this reason also.

Insofar as the art of record does not contain the alleged motivation to modify and/or combine, the question arises as to how the Office Action asserts such alleged motivation to modify and/or combine. Applicant respectfully points out that there is only one objectively verifiable place in the documentation of record wherein such teachings appear: Applicant's patent application.

Use of the Applicant's patent application as a template to piece references together gives some explanation as to how references that do not lend themselves to be combined with each other or used to modify each other apparently have been forcibly shoehorned together in an attempt to meet the claim recitations. Apart from being arguably in the same analogous art, Mays and Simon simply do not fit together in any reasonably combinable way. The reader of Mays receives reflected signals whereas the control circuit of Simon receives non-reflected signals. As described above, the purpose of Mays would not be met with non-reflected signals and the purpose of Simon would not be met with reflected signals. Consequently, the combination of Mays and Simon simply does not make sense since they use types of signals that are contrary to one another and teach away from each other. As discussed above, signal type is part of the claimed invention, so this incompatibility of signal types between Mays and Simon further shows that the combination of Mays and Simon is not proper to be used as prior art with respect to the claimed invention.

Accordingly, insofar as that the only objectively verifiable teachings of record showing the alleged motivation to modify and/or combine reside in Applicant's patent application, it follows that the Office Action has used Applicant's patent application as a template by which to piece together the related art to reach Applicant's claims at issue. As set forth above, under the MPEP standards this is impermissible hindsight. Accordingly, Applicant respectfully requests that Examiner allow Claim 1, 7, 14, and 18 for at least this reason also.

B. Discussion of Dependent Claims

Claims 2-6, 8-13, 15-17, and 19-24 depend either directly or indirectly from Independent Claims 1, 7, 14, and 18 respectively. "A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers." 35 USC § 112 paragraph 4. Consequently, Dependent Claims 2-6, 8-13, 15-17, and 19-24 are not rendered obvious by the art of record for at least the reasons why Independent Claims 1, 7, 14, and 18 are not rendered obvious by the art record. Accordingly, Applicant respectfully requests that Examiner hold Claims 2-6, 8-13, 15-17, 19-24 allowable for at least these reasons.

IV. Conclusion

Applicant has shown above that the art of record does not establish a *prima facie* case of unpatentability of either Independent Claim 1, Independent Claim 7, Independent Claim

14, or Independent Claim 18. Accordingly, Applicant respectfully requests that Examiner allow Independent Claim 1, Independent Claim 7, Independent Claim 14, and Independent Claim 18 and issue a notice of allowance. Furthermore, Applicant has shown that the art of record does not establish a prima facie case of unpatentability of either Dependent Claims 2-6, Dependent Claims 8-13, Dependent Claims 15-17, or Dependent Claims 19-24 which, respectively, depend from Independent Claim 1, Independent Claim 7, Independent Claim 14, and Independent Claim 18. Accordingly, Applicant respectfully requests that Examiner allow Dependent Claims 2-6, Dependent Claims 8-13, Dependent Claims 15-17, and Dependent Claims 19-24 for at least the foregoing reasons.

All of the claims remaining in the application are now clearly allowable. Favorable consideration and a Notice of Allowance are earnestly solicited.

Respectfully submitted,
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